(59)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

Cr. M.P. No. 568/07

मामला क्रमांक ..... **सन् 200**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

SB: HON'BLE SHRI DHIRENDRA MISHRA,J.

PETITIONER Dr. P. Narsaiah, S/o Shri M. Erappa, aged about 62 years, R/o 73-B Vinay Marg, Siddharth Nagar, MYSORE (Karnataka)

VERSUS

RESPONDENT State of Chhattisgarh, through Station House Officer, P.S. Gudiyari, Distt. Raipur (CG)

5-12-2007

Shri G.S. Agrawal, Sr. Adv. with Shri Sudeep Verma, Counsel for the applicant.

Shri G.K. Beriwal, Dy. Advocate General, for the State.

By this petition under Section 482 of Cr.P.C., the petitioner has prayed for quashing of proceedings in Criminal Case No. 950/2005 pending in the Court of Additional Chief Judicial Magistrate, Raipur on the ground that even if the whole allegation present in the F.I.R. of Ex. P-1 is taken to be true in its entirety, no ingredient of offence as defined under Section 420 of I.P.C. is made out.

Learned counsel for the applicant argued that from perusal of the complaint itself, it would be evident that the complainant and Subramaneshwara Oil Industry, Banglore entered into a contract and appointed the complainant as assignee agent for their product 'Real Drop Oil' and thereafter an amount of Rs. 5 lacs was received by them through demand draft dated 13-2-2004 and in lieu of the same, ordered goods was delivered to the complainant. Subsequently also on payment of Rs. 3,51,721/- on 1-3-2004, goods was delivered to the complainant on 18-3-2004. The allegation is that a total amount

शासकीय क्षेत्रीय मुद्रणालय, राजनांदगांव —FS/59— 8/2007 —30,000.

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मामला क्रमांक Cr.M.P.No. 568/07 सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

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of Rs. 8,58,800/- was received by the applicant from the complainant however no goods was supplied against the above payment. Thus the allegation present in the complaint is purely of civil nature and the same does not constitute cheating. The complainant has already filed a civil suit of Annexure P-3 for recovery of the amount and in these circumstances, continuance of criminal prosecution in criminal case No. 950/2005 is an abuse of process of Court and the same should be quashed.

From perusal of the allegations present in the complaint, it is seen that the applicant representing himself to be manufacturer of the product 'Real Drop Oil', appointed the complainant as consignee agent and obtained advance in lieu of supply of 'Real Drop Oil'. After fulfilling their promise on first two occasions, on the third occasion they failed to supply goods to the complainant and when the complainant went to Banglore and verified about the activities of the industry, he learnt that the said industry is not engaged in manufacturing of oil and thereafter he filed the complaint.

Having considered the allegations present in the written complaint of Ex. P-1 on the basis of which the offence has been registered by the police, there is prima facie evidence of cheating available against the petitioner and the prosecution of the applicant in the aforesaid criminal case cannot be quashed in exercise of inherent powers under Section 482 of the Cr.P.C.

The petition is rejected.

Sd/-
Dhirendra Mishra
Judge